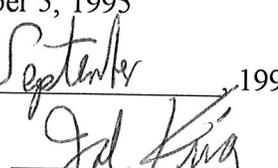


1 those documents does not excuse him from the responsibility to provide accurate
2 and truthful information to this Department to enable the Director to exercise the
3 discretion and make the decisions required of the Director for purposes of
4 administering the licensing of agents in this state. Further, while Mr. Bowers may
5 have testified credibly that he read the application in haste and failed to completely
6 understand the breadth and scope of the information asked of him in the
7 application, this also does not excuse him from his responsibility to provide
8 accurate information. Further, his failure to understand these documents, in a
9 business such as the business of insurance involving potentially complex
10 contractual relationships between the insurers that Mr. Bowers might represent
11 and the public does not support a finding that Mr. Bowers possesses the requisite
12 qualification to be licensed by the Department as an insurance agent.

13 Mr. Bower knew about his undisclosed arrest. Mr. Bower knew about his
14 undisclosed conviction. Instead, Mr. Bower chose not to reveal either the arrest
15 or the conviction in the applications. As found by the Administrative Law Judge,
16 Mr. Bower's conscious choice constitutes a material misrepresentation in the
17 application for, or in the attempt to obtain, any insurance license within the
18 meaning of A.R.S. § 20-290(B).

19 Therefore, it is ordered denying the application for a property and casualty insurance agent license
20 submitted to the Department by Thomas Bower on December 5, 1995

21 EFFECTIVE this 4th day of September, 1996

22 
23 John King
Director of Insurance

1 A copy of the foregoing
mailed this 4th day of
2 September, 1996

3 Charles R. Cohen, Deputy Director
Catherine O'Neil, Assistant Director
4 John Gagne, Assistant Director
Maureen Catalioto, Supervisor
5 Department of Insurance
2910 North 44th Street, Suite 210
6 Phoenix, AZ 85018

7 Office of Administrative Hearings
1700 West Washington, Suite 602
8 Phoenix, AZ 85007

9 Gerrie L. Marks
Assistant Attorney General
10 1275 West Washington
Phoenix, AZ 85012

11 Thomas W. Bower
12 6830 W. Emily Bola Avenue
Peoria, AZ 85381

13 Thomas W. Bower
14 4220 W. Northern Avenue, #105
Phoenix, AZ 85051

15 State Farm Insurance Company of Arizona
16 18444 North 25th Avenue
Phoenix, AZ 85023

17
18 Kathy Linder
19
20
21
22
23

1 concerning the violation of any felony or misdemeanor, or are any charges now pending
2 against you?"

3 4. On February 21, 1996, Mr. Bower submitted to the Department an
4 application to renew the property and casualty insurance agent license ("the Renewal
5 Application").

6 5. Mr. Bower answered "No" to question (IV)(F) of the Renewal Application
7 which asked " HAVE YOU EVER, as a non-juvenile, been convicted of a felony or
8 misdemeanor that has not been **previously** reported to this Department **in writing** in
9 any prior application or renewal?"

10 6. On May 29, 1996, the Department denied Mr. Bower's application for a life
11 and disability insurance agent license pursuant to A.R.S. §21-290 (B)(1) and revoked
12 the conditional license which had been previously issued to him by the Department.

13 7. Mr. Bower timely submitted a request for hearing to the Department.

14 8. At the hearing, the Department conceded that it had erred and did not issue
15 a denial letter to Mr. Bower on his application for a property and casualty insurance
16 agent license. Mr. Bower raised this issue at the hearing and requested that the
17 hearing include the denial of that application. The parties stipulated and the
18 Administrative Law Judge granted the parties' request that: a) the above-referenced
19 May 29, 1996 letter be deemed to include the denial of Mr. Bower's property and
20 casualty insurance agent license on the same grounds as set forth in the May 29, 1996
21 letter for the denial of Mr. Bower's application for a life and disability insurance agent
22 license; and b) that the Notice of Hearing be amended accordingly. Therefore, the
23 scope of this hearing involved the Department's denial of the Applications.

24 9. On March 12, 1989, Mr. Bower was arrested by the Costa Mesa Police
25 Department in California and charged with a violation of California Penal Code §§602(2)
26 and 647(a) and (d).

27 10. On June 22, 1989, Mr. Bower pleaded guilty and was convicted in The
28 People of the State of California v. Thomas William Bower, Municipal Court of Orange
29 County Harbor Judicial District, Orange County, California, Case No. CMH-M76345 of
30 Trespass, a violation of §602 of the California Penal Code, a misdemeanor.

1 11. Mr. Bower failed to disclose on the Applications that he had been arrested,
2 questioned, taken into custody charged with, or ever been the subject of an
3 investigation concerning a felony or misdemeanor. Mr. Bower failed to disclose on the
4 Applications that he had been convicted of a misdemeanor.

5 12. On November 24, 1992, the Honorable Susan Shaw of the Municipal Court,
6 Orange County Harbor Judicial District, Orange County, California, entered an Order
7 (Exhibit 9) which set aside and vacated Mr. Bower's plea of guilty in the matter set forth
8 above in paragraph 10, entered a plea of not guilty and dismissed the complaint .

9 13. The Order referenced above in paragraph 12 provides that: "THIS ORDER
10 DOES NOT RELIEVE YOU OF THE OBLIGATION TO DISCLOSE THE CONVICTION IN RESPONSE TO
11 ANY DIRECT QUESTION CONTAINED IN ANY QUESTIONNAIRE (SIC) OR APPLICATION FOR PUBLIC
12 OFFICE, FOR LICENSURE BY ANY STATE OR LOCAL AGENCY, OR FOR CONTRACTING WITH THE
13 CALIFORNIA LOTTERY".

14 14. Mr. Bower credibly testified that when he received the Order referenced
15 above in paragraphs 12 and 13, Mr. Bower's understanding was that the entire incident
16 was removed from his record as if it never happened. The Petition which gave rise to
17 that Order was signed by Mr. Bower's attorney and not Mr. Bower. One week before
18 the hearing of this matter, Mr. Bower became aware of the language of that Order as
19 set forth above in paragraph 13 which deals with disclosure.

20 15. Mr. Bower has worked for State Farm Insurance for approximately 13 and a
21 half years and has held the following positions with that insurer: health underwriter,
22 policyholder supervisor in health insurance, life insurance underwriter supervisor,
23 regional health superintendent and insurance agent. Mr. Bower was licensed as an
24 insurance agent in Texas in June or July 1995.

25 16. In the Texas application for licensure as an insurance agent, the questions
26 dealing with criminal background addressed financial and insurance matters. Mr.
27 Bower answered "No" to those questions as he did not have any criminal history
28 relating to financial or insurance matters. Mr. Bower credibly testified that when he
29 completed the Applications he read the questions quickly and assumed that it was the
30

1 same questions as those he completed in the Texas application for licensure as an
2 insurance agent. At the hearing, Mr. Bower claimed that, in haste, he made that
3 mistake and he believed that the criminal background was wiped clean off his record
4 Mr. Bower credibly testified that he did not intend to deceive or withhold information
5 from the Department.

6 17. In mitigation, Mr. Bower claimed that the incident which brought about the
7 1989 criminal charges referenced above, were alcohol related. Since 1989, Mr. Bower
8 has been and is currently actively involved with Alcoholics Anonymous. Further, since
9 Mr. Bower entered the guilty plea referenced above in paragraph 10, he has undergone
10 psychological counseling to deal with his personal problems.

11 18. Mr. Bower asserted that the allegations set forth in the Notice of Hearing
12 regarding a violation of A.R.S. §20-291(G) is outside the scope of this hearing because
13 the Department's denial of the Applications was based on A.R.S. §20-290(B)(1) and not
14 A.R.S. §20-291(G).

15 **CONCLUSIONS OF LAW**

16 1. The Director has jurisdiction over this matter pursuant to A.R.S. §20-161.

17 2. The failure of Mr. Bower to answer questions (F)(1) and (F)(3) on the
18 Applications and question (IV)(F) on the Renewal Application in the affirmative
19 constitutes material misrepresentations in the application for, or attempt to obtain, any
20 insurance license within the meaning of A.R.S. §20-290(B)(1).

21 3. The allegation that Mr. Bower's conduct as described above in the Findings
22 of Fact constitutes a violation of A.R.S. §20-291(G) is an issue that is not within the
23 scope of this hearing as the Department's denial of the Applications was based on §20-
24 290(B)(1) and not A.R.S. §20-291(G). However, even if it were within the scope of this
25 hearing, the evidence of record does not support a finding of a violation of A.R.S. §20-
26 291(G).

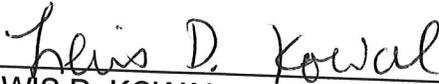
27 4. Pursuant to A.R.S. §20-290(B)(1), the Director may refuse to issue insurance
28 licenses to Mr. Bower if he finds that Mr. Bower made a material misrepresentation in the
29 application for, or attempt to obtain, any insurance license.
30

1 5. Notwithstanding the unintentional material misrepresentations in the
2 Applications and Renewal Application, Mr. Bower sustained his burden of proof by
3 establishing by a preponderance of the evidence that he possesses the requisite
4 qualifications to be licensed by the Department as a life and disability and property and
5 casualty insurance agent.

6 **RECOMMENDED ORDER**

7 Under the particular facts and circumstances of this case, including but not
8 limited to the nature of the underlying misdemeanor, that the guilty plea of the
9 misdemeanor was vacated and set aside and the duration of time that has elapsed, the
10 Administrative Law Judge recommends that the application for a life and disability
11 insurance agent license and the application for a property and casualty insurance agent
12 license submitted to the Department by Thomas Bower on December 5, 1995 be
13 granted.

14 Done this day, August 20, 1996.

15
16
17 
18 _____
19 LEWIS D. KOWAL
20 Administrative Law Judge

21 Original transmitted by mail to:

22 John C. King, Director
23 ATTN: Curvey Burton
24 Department of Insurance
25 2910 North 44th Street, #210
26 Phoenix, AZ 85018-7256

27 By

28 
29
30